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 7
 8 UNITED STATES DISTRICT COURT
 9 WASHINGTON WESTERN DISTRICT COURT

10 JON CUDDEBACK,

11 Plaintiff,

12 vs.

13 BEAR STEARNS RESIDENTIAL
 14 MORTGAGE CORPORATION; EMC
 15 MORTGAGE CORPORATION;
 16 STRUCTURED ASSET MORTGAGE
 17 INVESTMENT II, INC.; BEAR
 18 STEARNS MORTGAGE FUNDING
 19 TRUST 2006-AR5; WELLS FARGO
 20 BANK, N.A.; MORTGAGE
 21 ELECTRONIC REGISTRATION
 22 SYSTEMS, INC., ("MERS"); AND ALL
 23 PERSONS CLAIMING BY, THROUGH
 24 OR UNDER SUCH PERSON, ALL
 25 PERSONS UNKNOWN, CLAIMING
 26 ANY LEGAL OR EQUITABLE TITLE,
 27 ESTATE, LIEN OR INTEREST IN THE
 28 PROPERTY DESCRIBED IN THE
 COMPLAINT ADVERSE TO
 PLAINTIFFS TITLE THERETO; And
 DOES 1 to 20, Inclusive,

Defendants.

CASE NO.

C12-1300 MJP

COMPLAINT FOR:

1. Wrongful Foreclosure
2. Fraud
3. Quiet Title
4. Declaratory Relief
5. Violation of the Real Estate and Settlement Procedures Act, 12 U.S.C. §2601, et seq. and the Federal Reserve Acts, 24 C.F.R. §3500, et seq.
6. Violation of TILA, 15 U.S.C. §1641(g)



12-CV-01300-CMP

25 COMES NOW the Plaintiff, JON CUDDEBACK ("Plaintiff"), complaining against
 26 the Defendants, and each of them, as follows:

27 **INTRODUCTION**

- 28 1. This is an action brought by Plaintiff for declaratory judgment, injunctive

FFP/NO Sum-Is.

1 and equitable relief, and for compensatory, special, general and punitive damages.
2 Plaintiff seeks to quiet title as of a date to be determined.

3 2. Plaintiff, disputes the title and ownership of the real property located at
4 3650 Bel-Red Road - Bellevue, Washington 98008 (the "property"), which is the
5 subject of this action, in that the originating mortgage lender, and others alleged to
6 have ownership, have unlawfully sold, assigned and/or transferred their ownership and
7 security interest in a Promissory Note and Deed of Trust related to the Property, and,
8 thus, do not have lawful ownership or a security interest in Plaintiff's Home which is
9 described in detail herein.

10 3. Plaintiff alleges that Defendants, and each of them, cannot show proper
11 receipt, possession, transfer, negotiations, assignment and ownership of the
12 borrower's original Promissory Note and Deed of Trust, resulting in imperfect
13 security interests and claims.

14 4. Plaintiff further alleges that Defendants, and each of them, cannot
15 establish possession and proper transfer and/or endorsement of the Promissory Note
16 and proper assignment of the Deed of Trust herein; therefore, none of the Defendants
17 have perfected any claim of title or security interest in the Property. Defendants, and
18 each of them, do not have the ability to establish that the mortgages that secure the
19 indebtedness, or Note, were legally or properly acquired.

20 5. Plaintiff alleges that an actual controversy has arisen and now exists
21 between the Plaintiff and Defendants, and each of them. Plaintiff desires a judicial
22 determination and declaration of its rights with regard to the Property and the
23 corresponding Promissory Note and Deed of Trust.

24 6. Plaintiff also seeks redress from Defendants identified herein below for
25 damages, for other injunctive relief, and for cancellation of written instruments based
26 upon:

27 a. An invalid and unperfected security interest in Plaintiff's Home
28 hereinafter described;

b. Void "True Sale(s)" violating New York law and express terms of the Pooling and Servicing Agreement ("PSA") governing the securitization of Plaintiff's mortgage, which is a Trust Agreement required to be filed under penalty of perjury with the United States Securities and Exchange Commission ("SEC") and which, along with another document, the Mortgage Loan Purchase Agreement ("MLPA"), is the operative securitization document created by the finance and securitization industry to memorialize securitization transactions (see further discussion of the PSA herein);

c. An incomplete and ineffectual perfection of a security interest in Plaintiff's Home;

d. A void or voidable Deed of Trust due to improper securitization, for which there is a reasonable apprehension that, if left outstanding, will cause a serious injury to Plaintiff's title interests.

THE PARTIES

7. Plaintiff is now and at all relevant times to this action, a resident of the County of King, State of Washington.

8. Plaintiff is further informed and believes, and thereon alleges, that BEAR STEARNS RESIDENTIAL MORTGAGE CORPORATION, is the Originator of the loan and/or purported participant in the imperfect securitization of the Note (incorporated by reference herein) and/or Deed of Trust, (incorporated by reference herein), as more particularly described in this Complaint.

9. Plaintiff is further informed and believes and thereon alleges that Defendant EMC MORTGAGE CORPORATION is the present purported Master Servicer of the mortgage herein and/or is a purported participant in the imperfect securitization of the and/or the Deed of Trust, as more particularly described in this Complaint.

10. Plaintiff is informed and believes, and thereon alleges that BEAR STEARNS MORTGAGE FUNDING TRUST 2006-AR5 is a Real Estate Mortgage

1 Investment Conduit ("REMIC") Trust. Plaintiff is further informed and believes that
2 WELLS FARGO BANK, N.A. is the purported Trustee for BEAR STEARNS
3 MORTGAGE FUNDING TRUST 2006-AR5 the REMIC Trust and/or a purported
4 participant in the imperfect securitization of the Note and/or the Deed of Trust as more
5 particularly described in this Complaint.

6 11. Plaintiff is further informed and believes, and thereon alleges, that
7 Defendant MERS is the purported Beneficiary under the Deed of Trust or mortgage
8 associated with Plaintiff's Note and/or is a purported participant in the imperfect
9 securitization of the Note and/or the Deed of Trust, as more particularly described in
10 this Complaint.

11 12. At all times relevant to this action, Plaintiff has owned the Property
12 located at 3650 Bel-Red Road - Bellevue, Washington 98008 (the "Property").

13 13. Plaintiff does not know the true names, capacities, or basis for liability of
14 Defendants sued herein as Does 1 through 20, inclusive, as each fictitiously named
15 Defendant is in some manner liable to Plaintiff, or claims some right, title, or interest
16 in the Property. Plaintiff will amend this Complaint to allege their true names and
17 capacities when ascertained. Plaintiff is informed and believes, and therefore alleges,
18 that at all relevant times mentioned in this Complaint, each of the fictitiously named
19 Defendants are responsible in some manner for the injuries and damages to Plaintiff so
20 alleged and that such injuries and damages were proximately caused by such
21 Defendants, and each of them.

22 14. Plaintiff is informed and believes, and thereon alleges, that at all times
23 herein mentioned, each of the Defendants were the agents, employees, servants and/or
24 the joint-venturers of the remaining Defendants, and each of them, and in doing the
25 things alleged herein below, were acting within the course and scope of such agency,
26 employment and/or joint venture.

27 **JURISDICTION**

28 15. The transaction and events which are the subject matter of this Complaint

1 all occurred within the County of King, State of Washington.

2 16. Plaintiff's property is located at 3650 Bel-Red Road - Bellevue,
3 Washington 98008 (the "property"). The Property is located within the County of
4 King, State of Washington.

5 17. The court has jurisdiction under 28 U.S.C. §1331 (federal question); 15
6 U.S.C. §1601, et seq (TILA); 15 U.S.C. §1692, Fair Debt Collection Practices Act; 12
7 U.S.C §2601 (RESPA); 28 U.S.C §1367 (Supplemental Jurisdiction) and the Home
8 Ownership and Equity Protection Act ("HOEPA") 12 U.S.C. §1461 et seq.

9 18. This court also has jurisdiction under all applicable federal jurisdiction
10 involving financial institutions involved in the mortgage fraud area such as the
11 Mortgage Fraud Act under 18 U.S.C §1006 (2007).

12 **FACTUAL ALLEGATIONS**

13 19. Plaintiff is also informed and believes and thereon alleges that at all
14 times mentioned herein any assignment of the Deed of Trust without proper transfer
15 of the obligation that securitization is a legal nullity.

16 20. Plaintiff, therefore, alleges, upon information and belief, that none of the
17 parties to neither the securitization transaction, nor any of the Defendants in this case,
18 hold a perfected and secured claim in the Property; and that all Defendants are
19 estopped and precluded from asserting an unsecured claim against Plaintiff's estate.

20 21. Plaintiff, disputes the title and ownership of the real property in question
21 (the "Property"), which is the subject of this action, in that the originating mortgage
22 lender, BEAR STEARNS RESIDENTIAL MORTGAGE CORPORATION sold,
23 assigned and/or transferred its ownership interest in the Promissory Note ("Note")
24 related to the Property to EMC MORTGAGE CORPORATION at or about the time
25 the original Note was executed by Plaintiff. Thereafter, EMC MORTGAGE
26 CORPORATION sold the Note to STRUCTURED ASSET MORTGAGE
27 INVESTMENT II, INC. Finally, the Note was sold to the BEAR STEARNS
28 MORTGAGE FUNDING TRUST 2006-AR5 the "Trust") with WELLS FARGO

1 BANK, N.A. acting as Trustee of the Trust on behalf of the Certificate Holders for
2 that trust. However, BEAR STEARNS RESIDENTIAL MORTGAGE
3 CORPORATION did not assign the Deed of Trust to EMC MORTGAGE
4 CORPORATION STRUCTURED ASSET MORTGAGE INVESTMENT II, INC. or
5 BEAR STEARNS MORTGAGE FUNDING TRUST 2006-AR5 as part of the sale of
6 the underlying Note. Furthermore, BEAR STEARNS RESIDENTIAL MORTGAGE
7 CORPORATION never assigned the beneficial ownership of the Deed of Trust to any
8 party. As a result of the transfer and assignment of the Note from BEAR STEARNS
9 RESIDENTIAL MORTGAGE CORPORATION to the other parties listed above, the
10 security interest in Plaintiff's property known as the Deed of Trust and or mortgage
11 was terminated as described in detail herein.

12 22. Plaintiff alleges that BEAR STEARNS MORTGAGE FUNDING
13 TRUST 2006-AR5 is the last known "owner" of the Promissory Note executed by the
14 Plaintiff based upon the above referenced sale.

15 23. Despite the sale of the Note to BEAR STEARNS MORTGAGE
16 FUNDING TRUST 2006-AR5, BEAR STEARNS RESIDENTIAL MORTGAGE
17 CORPORATION failed to transfer the physical Note to BEAR STEARNS
18 MORTGAGE FUNDING TRUST 2006-AR5 or to provide said Note to BEAR
19 STEARNS MORTGAGE FUNDING TRUST 2006-AR5 in bearer form. Therefore,
20 Plaintiff alleges that the Defendants, and each of them, cannot show proper receipt,
21 possession, transfer, assignment and/or ownership of the Plaintiff's original
22 Promissory Note and Deed of Trust, resulting in imperfect security interest and claims
23 against Plaintiff's title.

24 24. Plaintiff further alleges that Defendant BEAR STEARNS
25 RESIDENTIAL MORTGAGE CORPORATION and each of them, cannot establish
26 possession and/or proper transfer and/or endorsement of the Promissory Note and
27 proper assignment of the Deed of Trust herein either to BEAR STEARNS
28 MORTGAGE FUNDING TRUST 2006-AR5 or to any prior owners of the subject

1 Promissory Note in the chain of title; therefore, none of the Defendants have perfected
2 any claim of title or security interest in the property. Defendants and each of them do
3 not have the ability to establish that the Deed of Trust or mortgage that secured the
4 Note were legally or properly acquired by Defendants.

5 25. Plaintiff further alleges that Defendant BEAR STEARNS MORTGAGE
6 FUNDING TRUST 2006-AR5 may have sold the subject Note to a third party and/or
7 additional parties thereby further distancing the ownership of the subject Note from
8 BEAR STEARNS RESIDENTIAL MORTGAGE CORPORATION. Furthermore,
9 the sale of the Note by BEAR STEARNS RESIDENTIAL MORTGAGE
10 CORPORATION to at least two intermediary parties [EMC MORTGAGE
11 CORPORATION and STRUCTURED ASSET MORTGAGE INVESTMENT II,
12 INC.] prior to the sale of same Note to BEAR STEARNS MORTGAGE FUNDING
13 TRUST 2006-AR5 renders the current Deed of Trust/mortgage securing the original
14 loan invalid.

15 26. Plaintiff further alleges that the Deed of Trust is legally void in that the
16 original beneficiary of that Deed of Trust, the lender on the originating Note, has been
17 paid in full. In fact, BEAR STEARNS RESIDENTIAL MORTGAGE
18 CORPORATION, originated the underlying loan for Plaintiff's property and
19 immediately sold the loan Note to EMC MORTGAGE CORPORATION. As a result
20 of that sale, the original loan was actually paid off. This payoff of the underlying
21 original Note entered into by and between Plaintiff and BEAR STEARNS
22 RESIDENTIAL MORTGAGE CORPORATION, renders the current Deed of Trust
23 null and void.

24 27. Plaintiff alleges that an actual controversy has arisen and now exists
25 between Plaintiff and Defendants, and each of them. Plaintiff desires judicial
26 determination and declaration of its rights with regard to the property and the
27 corresponding Promissory Note and Deed of Trust.

28 28. Plaintiff seeks redress from Defendants identified herein below for

1 damages, for other injunctive relief, and for cancellation or nullification of the Deeds
2 of Trust and/or liens or mortgages on title based upon:

3 (a) After originating the loan, BEAR STEARNS RESIDENTIAL
4 MORTGAGE CORPORATION sold Plaintiff's Note to EMC MORTGAGE
5 CORPORATION and does not own the Note originally signed by the Plaintiff;

6 (b) Thereafter, EMC MORTGAGE CORPORATION sold the Note to
7 STRUCTURED ASSET MORTGAGE INVESTMENT II, INC.

8 (c) After the sale of the Promissory Note to STRUCTURED ASSET
9 MORTGAGE INVESTMENT II, INC., neither BEAR STEARNS RESIDENTIAL
10 MORTGAGE CORPORATION nor EMC MORTGAGE CORPORATION retained
11 any interest in the subject Note. Therefore, the Deed of Trust/mortgage became
12 invalid;

13 (d) After the sale of the Note to EMC MORTGAGE
14 CORPORATION, BEAR STEARNS RESIDENTIAL MORTGAGE
15 CORPORATION retained ownership of the Note due to the fact that the Note was
16 never legally transferred to EMC MORTGAGE CORPORATION or to any other
17 legal entity due to the negligent handling of the Note in question.

18 (e) Neither BEAR STEARNS MORTGAGE FUNDING TRUST
19 2006-AR5 nor any other party to this transaction has legal ownership of the Note due
20 to the fact that BEAR STEARNS MORTGAGE FUNDING TRUST 2006-AR5 never
21 received an endorsed assignment of the Note from BEAR STEARNS RESIDENTIAL
22 MORTGAGE CORPORATION or ever took legal possession of the Note;

23 (f) Plaintiff further alleges that the original Deed of Trust that secured
24 the Promissory Note listed MERS as the beneficiary.

25 (g) Plaintiff alleges that when BEAR STEARNS RESIDENTIAL
26 MORTGAGE CORPORATION sold the Note to EMC MORTGAGE
27 CORPORATION the original Note was separated from the Deed of Trust or
28 mortgage. As a result of this separation, neither the Deed of Trust or mortgage no

1 longer secures the original Note.

2 (h) Plaintiff alleges that MERS does not have the legal right to
3 substitute in a new Trustee for the Deed of Trust or mortgage instrument since only
4 the owner of the Note has that power. Plaintiff alleges that MERS has never been
5 given any written instructions by the current owners of the Note to substitute out the
6 original Trustee in favor of a substitute Trustee of the Deed of Trust.

7 (i) Plaintiff alleges that MERS does not have the legal right to transfer
8 the Deed of Trust or mortgage instrument due to the fact that MERS does not own the
9 Note and therefore cannot legally convey title of the Deed of Trust or mortgage
10 instrument to a third party. In addition, only the Trustee of the Deed of Trust has the
11 power and authority to assign the legal ownership of the Deed of Trust to a third party.

12 MERS has never been appointed the Trustee of the Deed of Trust.

13 29. Plaintiff alleges that neither EMC MORTGAGE CORPORATION,
14 STRUCTURED ASSET MORTGAGE INVESTMENT II, INC. or any other party has
15 any legal ownership of the Deed of Trust or mortgage instrument based upon the fact
16 that EMC MORTGAGE CORPORATION never assigned the Deed of Trust or
17 mortgage to BEAR STEARNS MORTGAGE FUNDING TRUST 2006-AR5 or in any
18 manner attempted to transfer ownership of the Deed of Trust or mortgage to any party.

19 Therefore, the beneficiary of the Deed of Trust has no legal relationship to either
20 BEAR STEARNS RESIDENTIAL MORTGAGE CORPORATION, EMC
21 MORTGAGE CORPORATION, STRUCTURED ASSET MORTGAGE
22 INVESTMENT II, INC. or BEAR STEARNS MORTGAGE FUNDING TRUST
23 2006-AR5 the alleged current owner of the Note.

24 30. After BEAR STEARNS RESIDENTIAL MORTGAGE
25 CORPORATION sold the Note, the Note became separated from the Deed of Trust or
26 mortgage instrument. Due to the separation of ownership of this Note after sale by
27 BEAR STEARNS RESIDENTIAL MORTGAGE CORPORATION to EMC
28 MORTGAGE CORPORATION, the beneficiary of the Deed of Trust no longer had

1 any legal relationship with the Note. Therefore, neither the original beneficiary of the
2 Deed of Trust nor any purported assignees of the Deed of Trust to any other parties
3 have the legal right to foreclose on the property. Any such foreclosure violates both
4 state and federal law due to the fact that only the owner of the Note can legally
5 foreclose or instruct a third party to foreclose upon a Deed of Trust and/or mortgage.

6 31. Plaintiff further alleges that the original beneficiary of the Deed of Trust
7 or mortgage instrument, MERS is not legally entitled to transact any business in the
8 State of Washington or any other state since it is no longer a valid legal entity having
9 changed or amended its corporate name to MERSCORP, Inc. on or about May 12,
10 2003. Plaintiff alleges that this amendment requires MERS to transact all business as
11 MERSCORP after 2004. Any and all legal actions taken by MERS after 2004 are
12 legally void. The State of Washington states that MERS is no longer registered to do
13 business in this state. Therefore, it cannot assign legal interests or in any way
14 participate in the foreclosure of any properties.

15 32. Plaintiff is informed and believes, and thereon alleges, that this loan was
16 securitized, with the Note not being properly transferred to Defendant, WELLS
17 FARGO BANK, N.A. acting as the Trustee for the Securitized Trust. As set forth
18 herein above, the Securitized Trust was formed by execution of a "Pooling and
19 Serving Agreement" (PSA).

20 33. Plaintiff is informed and believes, and thereon alleges, that the purchase
21 mortgage on the Property, the debt or obligation evidenced by the Note and the Deed
22 of Trust executed by Plaintiff in favor of the original lender and other Defendants,
23 regarding the Property, was not properly assigned and transferred to Defendants
24 operating the pooled mortgage funds or trusts in accordance with the PSA of the
25 entities making and receiving the purported assignments to this trust.

26 34. Plaintiff alleges that the PSA requires that each Note or Deed of Trust
27 had to be endorsed and assigned, respectively, to the trust and executed by multiple
28 intervening parties before it reached the Trust. Here, neither the Note nor the Deed of

1 Trust was assigned to the Securitized Trust by the closing date. Therefore, under the
2 PSA, any assignments of the Deed of Trust beyond the specified closing date for the
3 Trust are void.

4 35. Plaintiff further alleges that even if the Deed of Trust had been
5 transferred into the Trust by the closing date, the transaction is still void as the Note
6 would not have been transferred according to the requirements of the PSA, since the
7 PSA requires a complete and unbroken chain of transfers and assignments to and from
8 each intervening party. Documents filed with the SEC by the securitization
9 participants allegedly claim that the Note and Deed of Trust at issue in this case were
10 sold, transferred and securitized by Defendants, with other loans and mortgages with
11 an aggregate principal balance in excess of \$100,000,000 into BEAR STEARNS
12 MORTGAGE FUNDING TRUST 2006-AR5 which is a Common Law Trust formed
13 pursuant to New York law. A copy of the Prospectus Supplement can be found at the
14 site indicated below.

15 36. Plaintiff is informed and believes, and thereon alleges, that BEAR
16 STEARNS MORTGAGE FUNDING TRUST 2006-AR5 had no officers or directors
17 and no continuing duties other than to hold assets and to issue the series of certificates
18 of investment as described in the Prospectus identified herein below. A detailed
19 description of the mortgage loans which form BEAR STEARNS MORTGAGE
20 FUNDING TRUST 2006-AR5 is included in Form 424B5 ("the Prospectus"), which
21 has been duly filed with the SEC and which can be accessed through the below
22 mentioned footnote.¹

23 37. Plaintiff also alleges that the Note was secured by the Deed of Trust or
24 mortgage. Plaintiff alleges that as of the date of the filing of this Complaint, neither
25 the Deed of Trust or mortgage had not been legally assigned to any other party or
26 entity.

27 38. Plaintiff is informed and believes, that Defendant WELLS FARGO
28

1 <http://www.sec.gov/Archives/edgar/data/815018/000116231807000567/m0565424b5.htm>

1 BANK, N.A., alleges that it is the “holder and owner” of the Note and the beneficiary
2 of the Deed of Trust. However, the Note and Deed of Trust identify the mortgagee
3 and note holder as the original lending institution or Mortgage Originator. Documents
4 registered with the Securities and Exchange Commission (SEC) state that the original
5 lender allegedly sold the mortgage loan to EMC MORTGAGE CORPORATION
6 which sold the note to STRUCTURED ASSET MORTGAGE INVESTMENT II,
7 INC. Finally, BEAR STEARNS MORTGAGE FUNDING TRUST 2006-AR5, the
8 securitized REMIC Trust purchased the Note.

9 39. Plaintiff further alleges that no documents or records can be produced
10 that demonstrate that prior to the closing date for the purchase of the Note by BEAR
11 STEARNS MORTGAGE FUNDING TRUST 2006-AR5, the Note was duly
12 endorsed, transferred and delivered to BEAR STEARNS MORTGAGE FUNDING
13 TRUST 2006-AR5, including all intervening transfers. Nor can any documents or
14 records be produced that demonstrate that prior to the closing date, the Deed of Trust
15 was duly assigned, transferred and delivered to BEAR STEARNS MORTGAGE
16 FUNDING TRUST 2006-AR5, including all intervening assignments.

17 40. Plaintiff further alleges that any documents that purport to transfer any
18 interest in the Note to BEAR STEARNS MORTGAGE FUNDING TRUST 2006-
19 AR5 after the Trust closing date are void as a matter of law, pursuant to New York
20 trust law and relevant portions of the PSA.

21 41. The link to the SEC and the various documents filed with the SEC
22 regarding the Note are: SEC Website: <http://www.sec.gov>.

23 42. Plaintiff is further informed and believes, and thereon alleges, that the
24 purported assignments and transfers of Plaintiff’s debt or obligation did not comply
25 with New York law, and/or other laws and statutes, and, thus, do not constitute valid
26 and enforceable “True Sales.” Any security interest in the Property was, thus, never
27 perfected. The alleged holder of the Note is not the beneficiary of the Deed of Trust.
28 The alleged beneficiary of Plaintiff’s Deed of Trust does not have the requisite title,

1 perfected security interest or standing to proceed; and/or is not the real party in
2 interest with regard to any action taken or to be taken against the Property.

3 43. Plaintiff is also informed and believes, and thereon alleges, that at all
4 times herein mentioned, and any assignment of a Deed of Trust without proper
5 transfer of the obligation that it secures is a legal nullity.

6 44. As set forth hereinabove, Defendants, and each of them, violated the
7 express terms of the PSA which is a Trust Agreement and which, along with another
8 document, the Mortgage Loan Purchase Agreement, is the operative securitization
9 document created by the finance and securitization industry to memorialize a
10 particular securitization transaction. The PSA specifies the rights and obligations of
11 each party to the securitization transaction to each other, and is a public document on
12 file with the SEC. More specifically, the PSA requires strict compliance with its
13 procedures and timelines in order for the parties to achieve their specific objectives.

14 45. Securitization is the process whereby mortgage loans are turned into
15 securities, or bonds, and sold to investors by Wall Street and other firms. The purpose
16 is to provide a large supply of money to lenders for originating loans, and to provide
17 investments to bond holders which were expected to be relatively safe. The procedure
18 for selling of the loans was to create a situation whereby certain tax laws known as the
19 Real Estate Mortgage Investment Conduit (hereinafter "REMIC") Act were observed,
20 and whereby the Issuing Entities and the Lenders would be protected from either
21 entity going into bankruptcy. In order to achieve the desired "bankruptcy
22 remoteness," two "True Sales" of the loans had to occur, in which loans were sold and
23 transferred to the different parties to the securitization.

24 46. A "True Sale" of the loan would be a circumstance whereby one party
25 owned the Note and then sold it to another party. An offer would be made, accepted
26 and compensation given to the "seller" in return for the Note. The Notes would be
27 transferred, and the Deeds of Trust assigned to the buyers of the Note, with an
28 Assignment made every step of the way, and, furthermore, each Note would be

1 endorsed to the next party by the previous assignee of record.

2 47. In order for the Trustee of the Securitized Trust to have a valid and
3 enforceable secured claim against Plaintiff's Home, the Trustee must prove and certify
4 to all parties that, among other things required under the PSA:

5 a. There was a complete and unbroken chain of endorsements and
6 transfers of the Note from and to each party to the securitization transaction (which
7 should be from the (A) Mortgage Originator to the (B) Sponsor to the (C) Depositor to
8 the (D) Trust, and that all of these endorsements and transfers were completed prior to
9 the Trust closing dates (see discussion below); and

10 b. The Trustee of the Securitized Trust had actual physical possession
11 of the Note at that point in time, when all endorsements and assignments had been
12 completed. Absent such proof, Plaintiff alleges that the Trust cannot demonstrate that
13 it had perfected its security interest in Plaintiff's Home that is the subject of this
14 action. Therefore, if the Defendants, and each of them, did not hold and possess the
15 Note on or before the closing date of the Trust herein, they are estopped and precluded
16 from asserting any secured or unsecured claim in this case.

17 48. Plaintiff is informed and believes, and thereon alleges, that pursuant to the
18 terms of the PSA, the Mortgage Originator (i.e., the original lender herein) agreed to
19 transfer and endorse to the Trustee for the Securitized Trust, without recourse,
20 including all intervening transfers and assignments, all of its right, title and interest in
21 and to the mortgage loan (Note) of Plaintiff herein and all other mortgage loans
22 identified in the PSA.

23 49. Plaintiff is further informed and believes, and thereon alleges, that the
24 PSA provides that the transfers and assignments are absolute, were made for valuable
25 consideration, to wit, in exchange for the certificates described in the PSA, and were
26 intended by the parties to be a bona fide or "True Sale." Since, as alleged herein
27 below, True Sales did not actually occur, Plaintiff alleges that the Defendant Trustees
28 are estopped and precluded from asserting any secured or unsecured claim in this case.

1 50. Plaintiff is further informed and believes, and thereon alleges, that as a
2 result of the PSA and other documents signed under oath in relation thereto, the
3 Mortgage Originator, BEAR STEARNS RESIDENTIAL MORTGAGE
4 CORPORATION, the "Sponsor" EMC MORTGAGE CORPORATION and the
5 "Depositor" STRUCTURED ASSET MORTGAGE INVESTMENT II, INC. are
6 estopped from claiming any interest in the Note that is allegedly secured by the Deed
7 of Trust on Plaintiff's Home herein.

8 51. Plaintiff is informed and believes, and thereon alleges, that pursuant to
9 the terms of the PSA, the Mortgage Originator (i.e., the original lender herein) agreed
10 to transfer and endorse to the Trustee for the Securitized Trust, without recourse,
11 including all intervening transfers and assignments, all of its right, title and interest in
12 and to the mortgage loan (Note) of Plaintiff herein and all other mortgage loans
13 identified in the PSA.

14 52. Plaintiff is informed and believes, and thereon alleges, that the Note in
15 this case and the other mortgage loans identified in the PSA, were never actually
16 transferred and delivered by the Mortgage Originator to the Sponsor or to the
17 Depositor nor from the Depositor to the Trustee for the Securitized Trust. Plaintiff
18 further alleges, on information and belief, that the PSA herein provides that the
19 Mortgage Files of the Mortgages were to be delivered to BEAR STEARNS
20 MORTGAGE FUNDING TRUST 2006-AR5, which Mortgage Files include the
21 original Deeds of Trust, herein.

22 53. Based upon the foregoing, Plaintiff is further informed and believes, and
23 thereon alleges, that the following deficiencies exist, in the "True Sale" and
24 securitization process as to this Deed of Trust which renders invalid any security
25 interest in the Plaintiff's mortgage, including, but not limited to:

26 a. The splitting or separation of title, ownership and interest in
27 Plaintiff's Note and Deed of Trust of which the original lender is the holder, owner
28 and beneficiary of Plaintiff's Deed of Trust;

1 b. When the loan was sold to each intervening entity, there were no
2 Assignments of the Deed of Trust to or from any intervening entity at the time of the
3 sale. Therefore, "True Sales" could not and did not occur;

4 c. The failure to assign and transfer the beneficial interest in
5 Plaintiff's Deed of Trust to WELLS FARGO BANK, N.A., in accordance with the
6 PSA of the Defendants, as Securitization Participants;

7 d. The failure to endorse, assign and transfer Plaintiff's Note and/or
8 mortgage to Defendant WELLS FARGO BANK, N.A., as Trustee for BEAR
9 STEARNS MORTGAGE FUNDING TRUST 2006-AR5, in accordance with the
10 PSA;

11 e. No Assignments of Beneficiary or Endorsements of the Note to
12 each of the intervening entities in the transaction ever occurred, which is conclusive
13 proof that no true sales occurred as required under the PSA filed with the SEC; and

14 f. Defendants, and each of them, violated the pertinent terms of the
15 PSA.

16 54. Plaintiff, therefore, alleges, upon information and belief, that none of the
17 parties to neither the securitization transaction, nor any of the Defendants in this case,
18 hold a perfected and secured claim in the Property; and that all Defendants are
19 estopped and precluded from asserting an unsecured claim against Plaintiff's estate.

20 **FIRST CAUSE OF ACTION**

21 **WRONGFUL FORECLOSURE**

22 **(AGAINST ALL DEFENDANTS)**

23 55. Plaintiff re-alleges and incorporates by reference all preceding
24 paragraphs as though fully set forth herein.

25 56. An actual controversy has arisen and now exists between Plaintiff and
26 Defendants specified hereinabove, regarding their respective rights and duties, in that
27 Plaintiff contends that Defendants, and each of them, do not have the right to
28 foreclose on the Property because none of the Defendants and each of them, do not

1 own the Note of have any legal relationship to the Note despite the fact that BEAR
2 STEARNS MORTGAGE FUNDING TRUST 2006-AR5 purchased the Note from the
3 Depositor, STRUCTURED ASSET MORTGAGE INVESTMENT II, INC. Thus, the
4 purported power of sale as specified by the Deed of Trust and/or Mortgage in the
5 underlying case no longer applies. Without the ownership of the Note, the beneficiary
6 of the Deed of Trust or Mortgage cannot foreclose. Plaintiff further contends that the
7 above specified Defendants, and each of them, do not have the right to foreclose on
8 the Property because said Defendants, and each of them, do not own the Note
9 executed by Plaintiff originally.

10 57. Plaintiff is informed and believes and there upon alleges that the only
11 individual entity which may have standing to foreclose is BEAR STEARNS
12 MORTGAGE FUNDING TRUST 2006-AR5. Based upon the general business plan
13 operation of BEAR STEARNS MORTGAGE FUNDING TRUST 2006-AR5, all
14 Notes were packaged and sold to Real Estate Mortgage Investment Conduit
15 ("REMIC") Trusts such BEAR STEARNS MORTGAGE FUNDING TRUST 2006-
16 AR5. Each REMIC Trust purchased insurance to cover the risk of default. Plaintiff
17 alleges that the Note in question was paid off upon Plaintiff's default in payments as
18 defined by the PSA, BEAR STEARNS MORTGAGE FUNDING TRUST 2006-AR5
19 applied for payment through EMC MORTGAGE CORPORATION insurance carrier
20 and received payment for the entire past due principal and interest due on Plaintiff's
21 Note. Furthermore, the originator of the loan, BEAR STEARNS RESIDENTIAL
22 MORTGAGE CORPORATION as well as BEAR STEARNS MORTGAGE
23 FUNDING TRUST 2006-AR5 are no longer in existence or doing business. In fact,
24 Plaintiff alleges that all parties who have participated in the origination of or sale and
25 purchase of the Note have ceased business operations or have filed for bankruptcy
26 protection. Plaintiff further alleges that BEAR STEARNS MORTGAGE FUNDING
27 TRUST 2006-AR5 ceased doing business when its existence was terminated by the
28 sale or payoff of all loans it purchased through the securitization process.

1 58. Plaintiff request that this Court find that the purported power of sale
2 contained in the Note and Deed of Trust has no force and effect at this time, because
3 Defendants' have no legal right to foreclose under federal or state law. In addition,
4 the Deed of Trust no longer has any validity and cannot be used for foreclosure after
5 BEAR STEARNS RESIDENTIAL MORTGAGE CORPORATION sold the loan to
6 EMC MORTGAGE CORPORATION. Once the original loan was paid in full the
7 Deed of Trust became legally invalid. Similarly, when default insurance provided by
8 EMC MORTGAGE CORPORATION paid BEAR STEARNS MORTGAGE
9 FUNDING TRUST 2006-AR5 the entire balance of principal and interest owed by
10 Plaintiff, the entire loan obligation disappeared. No party to this action can enforce a
11 Note that has been paid off by default insurance as alleged in this complaint.

12 59. Since the creation of Plaintiff's Note herein and Deed of Trust,
13 Defendant MERS was named the "beneficiary" of the Deed of Trust.

14 60. Plaintiff is informed and believes, and thereon alleges, that Defendant
15 MERS lacks the authority under its corporate charter to foreclose a mortgage, or to
16 own or transfer an interest in a securitized mortgage because MERS charter limits
17 MERS powers and duties to function as an electronic registration system of certain
18 types of securities.

19 61. Plaintiff is informed and believes, and thereon alleges, that in order to
20 conduct a foreclosure action, a person or entity must have standing. Pursuant to the
21 Deed of Trust only the lender has the power to exercise the power of sale. No other
22 party has standing to foreclose upon Plaintiff's Note.

23 62. Plaintiff is informed and believes, and thereon alleges, that pursuant to
24 state law, to perfect the transfer of mortgage paper as collateral, the owner should
25 physically deliver the note to the transferee. Without physical transfer, the sale of the
26 note is invalid as a fraudulent conveyance or as unperfected.

27 63. The Note in this action identifies the entity to whom it was payable, the
28 original lender BEAR STEARNS RESIDENTIAL MORTGAGE CORPORATION.

1 That lender was paid in full by EMC MORTGAGE CORPORATION when that
2 entity bought the Note from BEAR STEARNS RESIDENTIAL MORTGAGE
3 CORPORATION. Therefore, the Note was originally paid in full by EMC
4 MORTGAGE CORPORATION and later by EMC MORTGAGE CORPORATION
5 insurance carrier after BEAR STEARNS MORTGAGE FUNDING TRUST 2006-
6 AR5 made an application under its insurance policy for full payment of principal and
7 interest of Plaintiff's loan after Plaintiff defaulted on his mortgage obligations. After
8 BEAR STEARNS MORTGAGE FUNDING TRUST 2006-AR5 was paid the entire
9 balance of the Note by EMC MORTGAGE CORPORATION the Note had been paid
10 in full and no obligation is currently owed by Plaintiff.

11 64. Defendants, and each of them, cannot produce any evidence that the
12 Promissory Note has been transferred to any party. Furthermore, Defendants and
13 each of them cannot produce any evidence that they have any legal contractual rights
14 to the current Note holder, BEAR STEARNS MORTGAGE FUNDING TRUST
15 2006-AR5. Therefore, Defendant, MERS can only transfer whatever interest it had in
16 the Deed of Trust. MERS is not the lender and MERS is not the owner of the
17 underlying security. MERS is merely been set up as a conduit to assist in the transfer
18 of ownership of the Deed of Trust to subsequent purchasers of the Note. Currently,
19 MERS has no contractual relationship to the owner of the Note. The Promissory Note
20 and Deed of Trust are inseparable: an assignment of the Note to EMC MORTGAGE
21 CORPORATION and any other later assignment to other parties including BEAR
22 STEARNS MORTGAGE FUNDING TRUST 2006-AR5 through the sale from
23 BEAR STEARNS RESIDENTIAL MORTGAGE CORPORATION invalidates any
24 transactions taken by MERS as a beneficiary of the Deed of Trust due to the fact that
25 MERS has never received any instruction from BEAR STEARNS MORTGAGE
26 FUNDING TRUST 2006-AR5 to foreclose upon the Note. In addition, neither has
27 ever entered into any contractual relationship with MERS which has authorized
28 MERS to perform any legal act.

1 65. Defendant MERS has failed to submit documents authorizing MERS as
2 nominee for the original lender, to assign the subject mortgage to any party. Hence,
3 MERS lacks authority as a mere nominee to assign Plaintiff's mortgage, making the
4 assignment of the Deed of Trust to any party null and void. Furthermore, MERS has
5 never recorded with the local County Recorder's Office any notice of any alleged and
6 defective assignment of any interest in the Deed of Trust or mortgage to any third
7 parties in violation of state and federal law.

8 66. In the instant action, BEAR STEARNS RESIDENTIAL MORTGAGE
9 CORPORATION as the nominee not only lacks authority to assign the mortgage, but
10 cannot demonstrate that BEAR STEARNS RESIDENTIAL MORTGAGE
11 CORPORATION or BEAR STEARNS MORTGAGE FUNDING TRUST 2006-AR5
12 had knowledge of or consented to the assignment by MERS of the Deed of Trust. In
13 fact, the Deed of Trust states that only the Lender beneficiary can foreclose. In every
14 case involving MERS, MERS is not the beneficiary of the loan or the owner of the
15 Note. Therefore, MERS cannot participate or assign to any third party the ability to
16 foreclose based upon the Deed of Trust or Mortgage.

17 67. The attempt by MERS to transfer the beneficial interest of a trust deed
18 without actual ownership of the underlying Note, is void under law. Therefore,
19 Defendant, MERS cannot establish that it is entitled to foreclose or assign the
20 foreclosure practice to any third party. For this reason, as well as the other reasons set
21 forth herein below, MERS cannot transfer an interest in real property, and could not
22 foreclose upon Plaintiff's property. Furthermore, no entity or company assigned by
23 MERS has the rights under the Deed of Trust to foreclose since MERS has no power
24 to properly assign the Deed of Trust or Mortgage without ownership of the Note.

25 68. Defendants, and each of them, through the actions alleged above, have
26 illegally commenced foreclosure under the Note on the Property via a foreclosure
27 action supported by false or fraudulent documents in violation of the Washington
28 Penal Code. Neither MERS nor any Trustee appointed by MERS has the legal right to

1 foreclose since none own the Note or had any legal relationship with BEAR
2 STEARNS MORTGAGE FUNDING TRUST 2006-AR5, the last owner of the
3 Note—since paid off by insurance.

4 69. The wrongful conduct of the above specified Defendants, and each of
5 them, unless restrained and joined by an Order of this Court, will continue to cause
6 great and irreparable harm to Plaintiff. The Plaintiff will not have the beneficial use
7 and enjoyment their Home and will lose the Property.

8 70. Plaintiff has no other plain, speedy or adequate remedy and the
9 injunctive relief prayed for below is necessary and appropriate at this time to prevent
10 irreparable loss to Plaintiff. Plaintiff has suffered and will continue to suffer in the
11 future unless Defendants' wrongful conduct is restrained and enjoined because real
12 property is inherently unique and it will be impossible for Plaintiff to determine the
13 precise amount of damage it will suffer.

14 **SECOND CAUSE OF ACTION**

15 **FRAUD**

16 **(Against All Defendants and Does 1-20)**

17 71. Plaintiff re-alleges and incorporates by reference all preceding paragraphs
18 as though fully set forth herein.

19 72. Defendants, specifically Defendant EMC MORTGAGE
20 CORPORATION, WELLS FARGO BANK, N.A., and others intentionally
21 misrepresented to Plaintiff that it was entitled to receive mortgage payments from
22 Plaintiff based upon mortgage statements sent to Plaintiff by EMC MORTGAGE
23 CORPORATION. In fact, Defendants were not entitled to receive mortgage payments
24 as EMC MORTGAGE CORPORATION did not have equitable, or actual beneficial
25 interest in the Note or the property. In addition, EMC MORTGAGE
26 CORPORATION did not have a contractual right to receive those payments under any
27 contractual rights received from BEAR STEARNS MORTGAGE FUNDING TRUST
28 2006-AR5. All Defendants knew that the Note in question had been paid off in full as

1 a result of the application for mortgage default insurance by BEAR STEARNS
2 MORTGAGE FUNDING TRUST 2006-AR5.

3 73. All Defendants misrepresented that they are the "holder and owner" of
4 the Note and/or the beneficiary of the Deed of Trust. However, this was not true and
5 was a misrepresentation of material fact. Defendants were attempting to collect on a
6 debt to which they have no legal, equitable or pecuniary interest in. This type of
7 conduct is outrageous. Defendants are fraudulently foreclosing on a property which
8 they have no monetary or pecuniary interest. No party is entitled to receive mortgage
9 payments from the Plaintiff since the original Note has been paid off at least twice:
10 Once by EMC MORTGAGE CORPORATION when it purchased the Note and then
11 again when the Note was paid off by default insurance taken out by BEAR STEARNS
12 MORTGAGE FUNDING TRUST 2006-AR5.

13 74. Defendants' failure to disclose the material terms of the transaction
14 between BEAR STEARNS RESIDENTIAL MORTGAGE CORPORATION and
15 EMC MORTGAGE CORPORATION, STRUCTURED ASSET MORTGAGE
16 INVESTMENT II, INC., and BEAR STEARNS MORTGAGE FUNDING TRUST
17 2006-AR5 and DOE 1 whereby BEAR STEARNS MORTGAGE FUNDING TRUST
18 2006-AR5 bought the Note is a violation of RESPA as well as other federal laws
19 instituted to protect homeowners and provide them with notice of the sale of their
20 loans. In fact, EMC MORTGAGE CORPORATION has collected more than
21 \$50,000.00 in mortgage payments from the Plaintiff despite the fact that the Note in
22 question is owned by BEAR STEARNS MORTGAGE FUNDING TRUST 2006-
23 AR5. Neither EMC MORTGAGE CORPORATION, WELLS FARGO BANK, N.A.,
24 nor any other party can show that the underlying Note has been assigned to either
25 entity.

26 75. The material misrepresentations were made by the Defendants with the
27 intent to cause Plaintiff to reasonably rely on the misrepresentation in order to induce
28 the Plaintiff to rely on the misrepresentations and pay mortgage payments to EMC

1 MORTGAGE CORPORATION as well as to other parties.

2 76. Defendants were aware of the misrepresentations and profited from them.

3 77. As a direct and proximate result of the misrepresentations and
4 concealment Plaintiff was damaged in an amount to be proven at time of trial.

5 78. Defendants are guilty of malice, fraud and/or oppression. Defendants'
6 actions in taking mortgage payments not due to them were malicious and done
7 willfully in conscious disregard of the rights and safety of Plaintiff in that the actions
8 were calculated to injure Plaintiff. As such Plaintiff is entitled to recover, in addition
9 to actual damages, punitive damages to punish Defendants and to deter them from
10 engaging in future misconduct.

11 **THIRD CAUSE OF ACTION:**

12 **QUIET TITLE**

13 **(As to All Defendants and All Persons Claiming by, through or Under Such**
14 **Person, All Persons Unknown Claiming Any Legal or Equitable Right,**
15 **Title, Estate, Lien or Interest in the Property described in the Complaint**
16 **Adverse to Plaintiff's Title Thereto and DOES 1 through 20)**

17 79. Plaintiff re-alleges and incorporates by reference all preceding
18 paragraphs as though fully set forth herein.

19 80. Plaintiff is the owner of the real property located at 3650 Bel-Red Road -
20 Bellevue, Washington 98008.

21 81. The basis of Plaintiff's title is a deed granting the above-described
22 property in fee simple to the Plaintiff as of the date of purchase of the property.

23 82. Plaintiff is informed and believes and on such information and belief
24 alleges that the Defendants and each of them, and all persons claiming by, through or
25 under such person, all persons unknown, claiming any legal or equitable title, estate,
26 lien or interest in the property described in the Complaint adverse to Plaintiff's title
27 thereto claim an interest adverse to Plaintiff in the above-described property as
28 adverse interest of the holders of the deed of trust against the subject property. The

1 deed of trust that has been recorded against the title to the subject property was
2 recorded in the official records of the County of King, State of Washington. Similarly
3 the Defendants including MERS and other unknown Defendants, specifically those
4 additionally designated as DOES 1 through 20, inclusive, claim interest in the
5 property adverse to Plaintiff as assignees and successors of Defendants.

6 83. Plaintiff is seeking to quiet title against the claims of all Defendants
7 including the claims of all possessors of the Note, the possessors of beneficial title
8 and interest of the Deed of Trust recorded against title to the property, the claims of
9 all unknown Defendants whether or not the claim or cloud upon title is known to
10 Plaintiff and the unknown, uncertain, or contingent claim, if any, of any Defendants
11 named herein or otherwise unknown. The claims of Defendants are without any right
12 whatsoever and such Defendants have no right to title, estate, lien, or interest
13 whatsoever in the above-described property or any part thereof.

14 84. Plaintiff seeks to quiet title as of a date to be determined by this
15 honorable court.

16 85. Plaintiff is entitled to equitable relief and quiet title by a judicial decree
17 and order declaring Plaintiff to be the title owner of record of the property as to
18 effective date of said cancellation of any Deed of Trust or mortgage recorded against
19 title and quieting Plaintiff's title therein and thereto subject only to such legitimate
20 liens and encumbrances as the court may deem void, and avoiding any liens or
21 encumbrances upon the property created by the Defendants or by their putative
22 predecessors or by any of them. Plaintiff's Note has been paid off. All of Plaintiff's
23 Note obligations have been satisfied.

24 **FOURTH CAUSE OF ACTION**

25 **DECLARATORY RELIEF**

26 **(Against All Defendants)**

27 86. Plaintiff is informed and believes and upon that basis alleges that
28 Defendants dispute Plaintiff's contentions and instead contend the foreclosure sale or

1 attempt to foreclose upon the property was valid or legal.

2 87. An actual controversy has arisen and now exists between Plaintiff and
3 Defendants concerning their respective rights and duties regarding the Note and Trust
4 Deed.

5 88. Plaintiff contends that pursuant to the transactions between BEAR
6 STEARNS RESIDENTIAL MORTGAGE CORPORATION, EMC MORTGAGE
7 CORPORATION, STRUCTURED ASSET MORTGAGE INVESTMENT II, INC.,
8 and BEAR STEARNS MORTGAGE FUNDING TRUST 2006-AR5 do not have
9 authority to foreclose upon and sell the subject Property.

10 89. Plaintiff therefore requests a judicial determination of the rights,
11 obligations and interest of the parties with regard to the Property, and such
12 determination is necessary and appropriate at this time under the circumstances so that
13 all parties may ascertain and know their rights, obligations and interests with regard to
14 the Property.

15 90. Plaintiff requests a determination of the validity of the Trust Deeds
16 utilized to foreclose as well as a judicial determination of whether any Defendant had
17 the legal right to foreclose based upon the Deed of Trust or Mortgage.

18 91. Plaintiff requests a determination of the validity of the Notice of Default.

19 92. Plaintiff requests a determination of whether any Defendant had
20 authority to foreclose on the Property.

21 93. Plaintiff requests a determination of whether a foreclosure sale was valid
22 and whether the title to the property should be returned to Plaintiff free of
23 encumbrance or lien of any Defendant or any other lender claiming ownership of the
24 Note.

25 ////

26 ////

27 ////

28 ////

FIFTH CAUSE OF ACTION

**VIOLATION OF THE REAL ESTATE AND SETTLEMENT
PROCEDURES ACT, 12 U.S.C. §2601, ET SEQ. AND THE FEDERAL
RESERVE ACTS, 24 C.F.R. §3500, ET SEQ.**

(Against All Defendants)

94. Plaintiff re-alleges and incorporates by this reference all the allegations for the preceding paragraphs of this complaint as though fully set forth herein.

95. The loans to Plaintiff by Defendants, BEAR STEARNS RESIDENTIAL MORTGAGE CORPORATION are federally regulated mortgage loans defined in the Real Estate Settlement Procedures Act ("RESPA") and implemented by regulation acts which are broad in terms of the requirements.

96. Defendants have violated the Real Estate Settlement Procedures Act (RESPA) 12 U.S.C. §2607(a) which provides: that "no person shall give and no person shall accept any fee, kickback or thing of value pursuant to any agreement or understanding, oral or otherwise that business incident to or a part of a real estate settlement service involving a federal related mortgage loan shall be referred to any person."

97. Defendants also violated §8(a) of RESPA, 12 U.S.C. §2607(b) which provides that "no person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed." Section 8 violations are further defined by 24 C.F.R. §3500.14, "prohibition against kickbacks and unearned fees."

98. Also, HUD addressed payments in the form of Yield Spread Premiums ("YSP") and explained that "in some cases less scrupulous brokers and lenders take advantage of the complexity of the settlement transaction and use YSP as a way to enhance the probability of mortgage transactions without offering the borrower lower upfront fees." Id. at 53, 54.

1 99. Defendant BEAR STEARNS RESIDENTIAL MORTGAGE
2 CORPORATION paid to the brokers and/or lenders a YSP on Plaintiff's loans and no
3 Defendant offered Plaintiff lower upfront fees for this YSP payment. To the contrary,
4 Defendants implemented their fraud scheme against Plaintiff and placed Plaintiff into
5 a more expensive loan than Plaintiff was in prior to meeting the Defendants or should
6 have been placed into based upon the Plaintiff's credit score and income.

7 100. Moreover, HUD established a two part test for determining the legality
8 of lender payments to mortgage brokers under RESPA: "(A) whether goods or
9 facilities were actually furnished or the services were actually performed for the
10 compensation paid, and (B) whether the payments are reasonably related to the value
11 of the goods or facilities that were actually furnished or services that were actually
12 performed." HUD, statement of policy 2001-1, 66 Fed. Reg. at 53, 052.

13 101. In the case at bar, the Defendants, and each of them, engaged in
14 goods/services that were not actually performed and where the payments were not
15 actually related to the value of the goods/services because Defendants chose to
16 implement their scheme as alleged above.

17 102. Defendants' acceptance of a YSP and/or other payments and Defendants
18 BEAR STEARNS RESIDENTIAL MORTGAGE CORPORATION payment of that
19 YSP or other payments was an unlawful kickback, unlawful fee splitting and/or an
20 unearned fee under RESPA because it was not reasonably related to the performance
21 of lawful services by the accepting Defendants. Instead of performing lawful
22 services, the accepting Defendants implemented their fraud scheme as alleged above.

23 103. Defendant BEAR STEARNS RESIDENTIAL MORTGAGE
24 CORPORATION should have known that the Defendants (14) did not earn the YSP
25 or other payments because, inter alia, "... common industry practice is that lenders
26 follow underwriting standards that demand a review of originations and therefore
27 lenders typically know that brokers have performed the services required...." HUD's
28 2001-1 Policy Statement at 53055. If Defendant BEAR STEARNS RESIDENTIAL

1 MORTGAGE CORPORATION had reviewed Plaintiff's loan originations, including
 2 their loan applications, BEAR STEARNS RESIDENTIAL MORTGAGE
 3 CORPORATION would have learned of the obvious red flags said applications
 4 contained.

5 104. Pursuant to 12 U.S.C. §2607(d), Plaintiff is entitled to recover from
 6 Defendants and each of them in an amount equal to three times the amount of any and
 7 all charges for "settlement services" paid directly or indirectly by Plaintiff as well as
 8 actual damages, court costs, attorney fees and other amounts or damages permissible
 9 under RESPA.

10 105. By the actions described herein and as a proximate cause of Defendants
 11 conduct, Plaintiffs have been damaged in an amount to be proven at trial but not yet
 12 ascertained.

13 106. Under 12 U.S.C. §2607(d), Plaintiff asks for triple damages because
 14 Defendants knew or should have known their conduct was directed to Plaintiff and the
 15 Defendants knew or should have known that their conduct would likely cause
 16 Plaintiff injury.

17 107. Wherefore, Plaintiff prays for relief as set forth below.

18 **SIXTH CAUSE OF ACTION**

19 **VIOLATION OF TILA, 15 U.S.C. §1641(g)**

20 **(Against All Defendants)**

21 108. Plaintiff re-alleges and incorporates by this reference all the allegations
 22 for the preceding paragraphs of this complaint as though fully set forth herein.

23 109. Under 15 U.S.C. §1641(g) "liability of assignees" federal law requires
 24 that when an entity purchases or is assigned the beneficial interests in a loan on a
 25 property it must notify the borrower in writing within thirty (30) days of when the
 26 loan is transferred. (15 U.S.C. §1641(g)) Subsection (g) lists the particular
 27 information that the assignee noticed must contain.

28 110. 15 U.S.C. §1540 authorizes a civil action for violations of §1641 for (a)

1 actual damages, or (b) statutory damages that include (i) damages equal to twice the
 2 amount of any finance charge or (ii) for a credit transaction secured by real property
 3 in an amount not less than \$400.00 and not greater than \$4,000.00. (15 U.S.C.
 4 §1640(a))

5 111. Plaintiff alleges that based upon all of the purchases and assignments of
 6 the original promissory note as stated in this complaint that the Defendants and each
 7 of them have failed to properly notify Plaintiff of each respective transfer of
 8 ownership of the original promissory note. As a result, and based upon the failure of
 9 the Defendants and each of them to notify the Plaintiff of each subsequent sale of the
 10 subject promissory note related to Plaintiff's mortgage/deed of trust, that Plaintiff has
 11 been damaged in an amount that will be determined at time of trial.

12 112. Plaintiff alleges that each assignment of his/her promissory
 13 note/mortgage required the Defendants and each of them to notify him/her within
 14 thirty (30) days of when his loan had been transferred. Plaintiff contends that each
 15 Defendant violated 15 U.S.C. §1640, et seq. in that no notice was ever provided to the
 16 Plaintiff of the sale of his/her promissory note to each subsequent purchaser of their
 17 note.

18 **PRAYER FOR RELIEF**

19 WHEREFORE Plaintiff, will ask for the following for each Cause of Action to
 20 be awarded:

21 **FIRST CAUSE OF ACTION**

- 22 1. For Compensatory Damages in an amount to be determined by proof at
 23 trial;
- 24 2. For Special Damages in an amount to be determined by proof at trial;
- 25 3. For General Damages in an amount to be determined by proof at trial;
- 26 4. For Punitive Damages as allowed by law;
- 27 5. For Restitution as allowed by law;
- 28 6. For Attorney's Fees and Costs of this action;

1 7. For Declaratory Relief, including but not limited to the following Decrees
2 of this Court that:

- 3 a. Plaintiff is the prevailing party;
- 4 b. The Trustees of the REMIC Trusts have no enforceable secured or
5 unsecured claim against the Property;
- 6 c. The Sponsor has no enforceable secured or unsecured claim
7 against the Property;
- 8 d. The Depositor has no enforceable secured or unsecured claim
9 against the Property; and
- 10 e. The Mortgage Originator has no enforceable secured or unsecured
11 claim against the Property.

12 **SECOND CAUSE OF ACTION**

- 13 1. For Compensatory Damages in an amount to be determined by proof at
14 trial;
- 15 2. For Special Damages in an amount to be determined by proof at trial;
- 16 3. For General Damages in an amount to be determined by proof at trial;
- 17 4. For Punitive Damages as allowed by law; and
- 18 5. For Restitution as allowed by law.

19 **THIRD CAUSE OF ACTION**

- 20 1. For Compensatory Damages in an amount to be determined by proof at
21 trial;
- 22 2. For Special Damages in an amount to be determined by proof at trial;
- 23 3. For General Damages in an amount to be determined by proof at trial;
- 24 4. For Punitive Damages as allowed by law;
- 25 5. For Restitution as allowed by law;
- 26 6. For Attorney's Fees and Costs of this action;
- 27 7. For Declaratory Relief, including but not limited to the following Decrees
28 of this Court that:

1 a. Plaintiff is the prevailing party;

2 b. No Defendant has an enforceable secured or unsecured claim. The
3 Note in question has been paid off in its entirety;

4 c. Neither BEAR STEARNS MORTGAGE FUNDING TRUST
5 2006-AR5 nor any other financial institutions have an enforceable secured or
6 unsecured claim against the Property; and

7 d. All mortgages or Deeds of Trust are hereby deemed void. The
8 current Trustee of the Deed of Trust in this case should reconvey title of the subject
9 Property to Plaintiff.

10 **FOURTH CAUSE OF ACTION**

11 1. For Compensatory Damages in an amount to be determined by proof at
12 trial;

13 2. For Special Damages in an amount to be determined by proof at trial;

14 3. For General Damages in an amount to be determined by proof at trial;

15 4. For Punitive Damages as allowed by law;

16 5. For Restitution as allowed by law;

17 6. For Attorney's Fees and Costs of this action;

18 7. For Declaratory Relief, including but not limited to the following Decrees
19 of this Court that:

20 a. Plaintiff is the prevailing party;

21 b. No Defendant has the legal right to foreclose on Plaintiffs'
22 property;

23 c. No Defendant has an enforceable secured or unsecured claim
24 against the property;

25 d. The original Deed of Trust is null and void due to the fact that the
26 Note it was created to secure has been sold to third parties without any assignment of
27 the Deed of Trust to those parties; and

28 e. The assignment of the Deed of Trust by MERS to any party or

1 legal entity is invalid.

2 **FIFTH CAUSE OF ACTION**

3 1. For Compensatory Damages in an amount to be determined by proof at
4 trial;

5 2. For Special Damages in an amount to be determined by proof at trial;

6 3. For General Damages in an amount to be determined by proof at trial;

7 4. For Punitive Damages as allowed by law;

8 5. For Restitution as allowed by law; and

9 6. For Attorney's Fees and Costs of this action.

10 **SIXTH CAUSE OF ACTION**

11 1. For Compensatory Damages in an amount to be determined by proof at
12 trial;

13 2. For Special Damages in an amount to be determined by proof at trial;

14 3. For General Damages in an amount to be determined by proof at trial;

15 4. For Punitive Damages as allowed by law;

16 5. For Restitution as allowed by law; and

17 6. For Attorney's Fees and Costs of this action.

18 Dated: _____

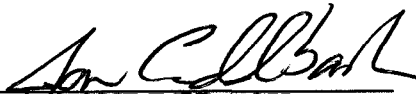
18 By: _____
19 JON CUDDEBACK
20 Plaintiff In Pro Se
21
22
23
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28

VERIFICATION OF PLAINTIFF

I, JON CUDDEBACK am the Plaintiff in the above-entitled action. I have read the foregoing complaint and know its contents thereon. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: 7-31-2012

By: 
JON CUDDEBACK
Plaintiff In Pro Se